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not accepted ~~8/14/02~~  
PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

CHANDLER R. DAWSON et al

Appln. No.: 09/767,943 ✓

Filed: January 24, 2001 ✓

Conf. No.: 2773

Group Art Unit: 1623

Examiner: Peselev, E.

For: TOPICAL TREATMENT OF PREVENTION OF  
OCULAR INFECTIONS

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TECH CENTER 1600/2900

Commissioner for Patents  
Washington, D.C. 20231

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Technology Center 2100

Sir:

The undersigned, on behalf of the petitioner, INSITE VISION INC., represents that the petitioner, INSITE VISION INC. is the owner of the entire right, title and interest of U.S. Application No. 09/346,113, filed on July 2, 1999, for TOPICAL TREATMENT OR PREVENTION OF OCULAR INFECTIONS by virtue of an Assignment from all of the inventors thereof executed on September 30 and 9, 1999, recorded on October 7, 1999 at Reel 010289, Frame 0628 (now issued as U.S. Patent 6,239,113); as well as the entire right, title and interest in the above-captioned U.S. Application No. 09/767,943 by virtue of an Assignment from all of the inventors thereof executed on September 30 and 9, 1999, recorded in Parent Application No. 09/346,113 (now U.S. Patent 6,239,113) on October 7, 1999, at Reel 010289, Frame 0628.

Petitioner hereby certifies that the above-mentioned Assignment has been reviewed and to the best of petitioner's

Terminal Disclaimer  
U.S. Appln. No. 09/767,943

knowledge and belief, title is in petitioner who is seeking to take this action.

Petitioner hereby disclaims the terminal part of any patent granted on the above-captioned U.S. Application No. 09/767,943 which would extend beyond the expiration of the full statutory term as presently shortened by any terminal disclaimer of U.S. Patent 6,239,113, and hereby agrees that any patent so granted on the above-captioned U.S. Application No. 09/767,943 shall be enforceable only for and during such period that the legal title to U.S. Patent 6,239,113 shall be the same as the legal title to said patent issuing from the above-captioned U.S. Application No. 09/767,943, this agreement to run with any patent granted on the above-captioned U.S. Application No. 09/767,943 and to be binding upon the grantee, its successors or assigns.

Petitioner does not disclaim any terminal part of any patent granted on the above-captioned U.S. Application No. 09/767,943 prior to the expiration date of the full statutory term as presently shortened by any terminal disclaimer of U.S. Patent 6,239,113 in the event that U.S. Patent 6,239,113 later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321(a), has all claims cancelled by a Reexamination Certificate, or is otherwise terminated prior to the expiration of its statutory term as presently shortened by any terminal disclaimer, except for the separation of legal title stated above.

The undersigned whose signature and title appear below is  
empowered to act on behalf of petitioner.

Terminal Disclaimer  
U.S. Appln. No. 09/767,943

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, Title 18, of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 5/10/02

Lyle M. Bowman  
Name: LYLE BOWMAN  
Title: VICE PRESIDENT